

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NORMAN GEORGE LAMBERT,

Plaintiff,

v.

FRANK BISIGNANO, Commissioner of
Social Security,

Defendant.

Case No. 2:23-cv-1814-JDP (SS)

ORDER

Plaintiff's counsel seeks an award of attorney fees under 42 U.S.C. § 406(b).¹ ECF No. 16. Plaintiff entered into a contingent fee agreement providing that he would pay counsel twenty-five percent of any award of past-due benefits. ECF No. 16-3 at 1. After this court remanded for further proceedings, plaintiff was found disabled and awarded \$116,664 in past-due benefits. ECF No. 16-1 at 3. Plaintiff's counsel requests \$19,950 in attorney fees, which is less than the statutory maximum, and which equates to an effective hourly rate of \$820.98.² ECF No. 16 at 4.

¹ Although the motion for fees was filed under plaintiff's name, plaintiff's counsel is the real party in interest. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002).

² Plaintiff states that the attorney who represented him at the administrative level is anticipated to receive \$9,200 in attorney fees under 42 U.S.C. § 406(a). Accordingly, \$9,200 is calculated in the 25% of fees awarded to plaintiff's attorneys.

1 An attorney is entitled to reasonable fees for successfully representing social security
2 claimants in district court.

3 Whenever a court renders a judgment favorable to a claimant under
4 this subchapter who was represented before the court by an
5 attorney, the court may determine and allow as part of its judgment
6 a reasonable fee for such representation, not in excess of 25 percent
of the total of the past-due benefits to which the claimant is entitled
by reason of such judgment.

7 42 U.S.C. § 406(b)(1)(A). Rather than being paid by the government, fees under section 406(b)
8 are paid by the claimant from the awarded past-due benefits. *Crawford v. Astrue*, 586 F.3d 1142,
9 1147 (9th Cir. 2009) (en banc) (citing *Gisbrecht*, 535 U.S. at 802). The twenty-five percent
10 statutory maximum fee is not an automatic entitlement; the court must ensure that the requested
11 fee is reasonable. *Gisbrecht*, 535 U.S. at 808-09 (“We hold that § 406(b) does not displace
12 contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts to review
13 for reasonableness fees yielded by those agreements.”). In assessing whether a fee is reasonable,
14 the court should consider “the character of the representation and the results the representative
15 achieved.” *Id.* at 808. A “court may properly reduce the fee for substandard performance, delay,
16 or benefits that are not in proportion to the time spent on the case.” *Crawford*, 586 F.3d at 1151.

17 The court finds that the requested fees are reasonable. Counsel’s billing records reflect a
18 total of 24.3 hours of attorney time on this case. ECF No. 16-4 at 1. Counsel’s request for
19 \$19,950, which is equivalent to the statutory maximum, would constitute an hourly rate of
20 approximately \$820.98 for attorney services. Counsel did not engage in dilatory conduct or
21 perform in a substandard manner. Indeed, counsel’s representation resulted in this matter being
22 remanded for further proceedings, which resulted in a favorable decision and an award of
23 benefits. *See* ECF Nos. 12 & 16-1. Given counsel’s experience, the result obtained in this case,
24 and the risk of loss in representing plaintiff, the court finds the hourly rate reasonable. *See, e.g.,*
25 *De Vivo v. Berryhill*, 2018 WL 4262007 (E.D. Cal. Sept. 6, 2018) (awarding fees at an effective
26 hourly rate of \$1,116.26); *White v. Berryhill*, No. cv 04-00331-AS, 2017 WL 11634804, at *3
27 (C.D. Cal. July 7, 2017) (awarding fees at an effective hourly rate of \$1,612); *Monica H. v.*
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1 *Comm'r, Soc. Sec. Admin.*, No. 3:16-cv-2111-JR (D. Or. Jan. 25, 2021) (awarding fees at an
2 effective hourly rate of \$2,000); *Kelly Kay M. v. O'Malley*, No. 22-cv-1969-DDL, 2024 WL
3 4536462, at *3 (S.D. Cal. Oct. 21, 2024) (awarding fees at an effective hourly rate of \$1,923.07).

4 Counsel concedes that the \$5,900 award should be offset by the fees previously awarded
5 under the under the Equal Access to Justice Act ("EAJA"). ECF No. 16; *see* ECF No. 12. He
6 also indicates that he will reimburse plaintiff the amount previously awarded under the EAJA.
7 *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (holding that where attorney's fees are
8 awarded under both EAJA and § 406(b), the attorney must refund the smaller of the two awards
9 to the plaintiff).

10 Accordingly, it is hereby ORDERED that:

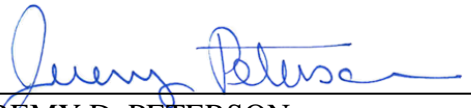
11 1. The motion for attorney fees, ECF No. 16, is GRANTED.

12 2. Plaintiff's counsel is awarded \$19,950 in fees pursuant to 42 U.S.C. § 406(b).

13 3. Upon receipt of the \$19,950 award, counsel shall refund to plaintiff the sum of \$5,900
14 previously awarded under the EAJA.

15 IT IS SO ORDERED.
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17 Dated: October 14, 2025

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19 JEREMY D. PETERSON
20 UNITED STATES MAGISTRATE JUDGE
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